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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

BETTER MORNINGS, LLC and ISLAND
BREEZE, LLC

Plaintiffs,

vs.

JOSEPH NILSEN and DIGITAL
CHECKMATE, INC.

Defendants.

Case No.: 2:19-cv-03854

**DECLARATION IN SUPPORT OF
MOTION FOR DEFAULT
JUDGMENT**

Berwin Cohen hereby declares as follows:

1. I am a partner at Wolffers, Cohen & Edderai LLP (“WCE”) and counsel to the Plaintiffs in this action, Better Mornings, LLC and Island Breeze, LLC. I am fully familiar with the facts and circumstances set forth herein.
2. Plaintiffs brought this action to restrain Defendants from interfering with and damaging their business interests by unlawful and malicious conduct, including false advertising under 15 USC §1125(a), product disparagement, commercial defamation, and deceptive business practices under New York Gen. Bus. Law § 349.
3. The summons and complaint in the above-captioned matter were properly served on Defendant Joseph Nilsen on July 10, 2019. A true and correct copy of the Affidavit of Service for Joseph Nilsen is attached as Exhibit A. See Exhibit A, Affidavit of Service on Joseph Nilsen.

- 1 4. The summons and complaint in the above-captioned matter were properly served on
2 Defendant Digital Checkmate, Inc. on July 11, 2019. A true and correct copy of the
3 Affidavit of Service for Digital Checkmate, Inc. is attached as Exhibit B. Exhibit B,
4 Affidavit of Service on Digital Checkmate, Inc.
- 5 5. Pursuant to Federal Rule of Civil Procedure 12(a), Defendants were required to file an
6 appearance within 21 days of service. Thus, Defendant Nilsen was required to file an
7 appearance on or before July 30, 2019 and Defendant Digital Checkmate, Inc. was
8 required to file an appearance on or before July 31, 2019.
- 9 6. The time for Defendants, Joseph Nilsen and Digital Checkmate, Inc., to appear, answer or
10 otherwise move with respect to the complaint herein has expired.
- 11 7. Defendants, Joseph Nilsen and Digital Checkmate, Inc., have not answered or otherwise
12 moved with respect to the complaint to date, and the time for Defendants Joseph Nilsen and
13 Digital Checkmate, Inc., to answer or otherwise move has not been extended.
- 14 8. Defendants Joseph Nilsen and Digital Checkmate, Inc., are not infants or
15 incompetent. Defendants Joseph Nilsen and Digital Checkmate, Inc., are not presently in the
16 military service of the United States, as appears from facts in this litigation.
- 17 9. The default of Defendants Joseph Nilsen and Digital Checkmate, Inc. has been noted by the
18 Clerk of Court. A copy of the Certificate is attached hereto as Exhibit C. See Exhibit C,
19 Clerk's Certificate of Default.
- 20 10. My practice is focused on taxation and commercial litigation. Over the last 20 years, I
21 have litigated cases around the country, including in federal district courts in California,
22 New York, and Washington, DC.
- 23 11. A summary of certain attorney hours and out-of-pocket costs that have been billed to
24 Plaintiffs on this case is attached as Exhibit D. Plaintiffs have paid an hourly rate of
25 \$475 per hour for my services in this matter. The hourly rates paid by Plaintiffs for the
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1 other attorneys at WCE who have participated in this matter, Jonathan Edderai, William
2 Talbot and Lorenz Wolffers, were \$275, \$400 and \$225, respectively. The hourly rate
3 paid by Plaintiffs for work performed by WCE clerks, Alexa Branzuela and Ettie
4 Cohen, was \$100. The fees invoiced by WCE to date total \$61,687.75. Total costs
5 incurred by WCE that were billed to Plaintiffs total \$7,071.14. Those costs include
6 filing, investigation, and process fees.

7 12. I supervised this case on a day-to-day basis and was personally involved in every aspect
8 of it. Based on my direct, personal knowledge of the time that was spent on this case,
9 and the costs that were incurred for it, I believe that our fees and costs attributable to
10 our success in this matter were conservative, fair and reasonable.

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12 I declare under penalty of perjury that the foregoing is true and accurate to the best of my
13 knowledge, information and belief.

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15 DATED: August 12, 2019

/s/ Berwin Cohen

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